



ORDINANCE REVIEW COMMITTEE

Members

Councilor John Thorpe, Chair
Megan Paik, Citizen, Vice-Chair
Councilor Marianne LaBarge
Councilor Jim Nash
Jeff Napolitano, Citizen

MEETING MINUTES

Date: December 7, 2020, Time: 5:30 p.m.

Virtual Meeting

1. **MEETING CALLED TO ORDER/ROLL CALL:** At 5:30 p.m., Councilor Thorpe opened the meeting. On a roll call, the following members were present: Councilor Marianne LaBarge, Councilor John Thorpe, Councilor James Nash, Megan Paik and Jeff Napolitano. Also present were City Solicitor Alan Seewald and Administrative Assistant Laura Krutzler.
2. **ANNOUNCEMENT OF AUDIO/VIDEO RECORDING**
Councilor Thorpe announced that the meeting was being audio/video recorded.
3. **PUBLIC COMMENT**
No members of the public were present, so Councilor Thorpe moved to the next item on the agenda.
4. **APPROVAL OF MINUTES OF NOVEMBER 17, 2020**
Councilor LaBarge moved to approve the minutes of November 17, 2020. Member Paik seconded.

Referring to a discussion in the minutes, Member Paik said she feels that the housing notification act is so critical and so time-sensitive that she wishes they didn't have to wait for an ordinance to be drafted. The country is facing an eviction crisis by the end of the year at the same time that there's going to be a COVID spike and an unemployment spike. She wondered if there is some way, if the planning department is already developing these resources, to somehow disseminate them to people under threat of eviction.

Member Napolitano talked about canvassing Springfield with this information, she reminded. She wondered what a process might be for that.

He thinks Member Napolitano did that as other than a government agent, Attorney Seewald noted. They are going to get to this later on the agenda when they talk about Councilor Nash's proposal for contacting renters. "We just don't have that information. We don't even know who's renting; we don't have any registration for renters," he pointed out.

Member Paik said she remembered Mr. Feiden mentioning there would be a public forum when it came time to consider the ordinance. She mentioned the possibility of putting information on the city website.

Putting something on the website would be up to the mayor, Attorney Seewald noted. They would be providing information they would hope the landlord would be required to provide at the commencement of the eviction process. He is sure if the mayor was asked and was provided some information he might put it up on the website but it would be up to him.

Member Paik said maybe she would reach out to him about that after she checks on the status of the development of the information.

Councilor LaBarge suggested members send changes to the minutes to Mrs. Krutzler before the meeting if they would like to make additions to the text.

Attorney Seewald pointed out that, traditionally, the chair and the administrative assistant jointly prepare the minutes and any addition to what the chair has developed would only be inserted if accepted by the body.

The motion to accept the minutes as amended passed unanimously 5:0 by roll call vote.

Councilor Thorpe offered a member of the public who had joined the meeting (Rye Buckley) the opportunity to make a public comment, but he declined.

5. SUGGESTED ORDINANCE CHANGES (NOT YET REFERRED TO CITY SOLICITOR)

Sign Ordinance Review to Comply with Supreme Court Decision

Member Paik expressed her understanding that the Supreme Court decision referred to is Reid vs. the Town of Gilbert, and Attorney Seewald confirmed that is correct.

Both the council president and he are fully aware this ordinance needs their attention, Attorney Seewald reported. They've made several stops and starts. There are some significant policy decisions that need to be made before anything is drafted because of the Gilbert decision. They are working on this but he is not sure it is something that's going to be drafted during the committee's tenure. They do know it needs to be done. At his instruction, the building department is not currently enforcing this other than on public property.

Ordinance Review Committee members are welcome to discuss and make recommendations as to what kind of ordinance they would like to see. He will say that regulations in this area have to be related to aesthetics and safety. Signs can't be regulated based upon what the sign says, he stressed. Regulation can only be based on size, location, etc. A sign that says 'Vote for Trump' cannot be treated differently than a sign that says 'Visit John's Toy Store.' The content of the sign can never be regulated by an ordinance.

Communities cannot regulate political signs differently than traditional signs, he elaborated.

Councilor LaBarge expressed her understanding that political signs are regulated, but Attorney Seewald said they cannot be. "It's all changed," Councilor Nash confirmed.

Member Paik said she is thinking ahead to the report they will produce. She thinks it should not be limited to proposals for ordinances. She thinks ideas that percolate through the committee are very relevant to policy makers. She would definitely want this to appear somewhere.

In terms of the sign ordinance, Councilor Nash commented that he appreciated it. He hated the day political signs went up and welcomed the day they all came down. "Our neighborhoods came back to normal." Then came the Supreme Court ruling saying they couldn't regulate any of that. "Our old ordinances just don't apply anymore." He expressed his understanding that the only place this applies is on public property.

They can regulate signs on private property but only the number, how large, how far from the sidewalk, etc., Attorney Seewald clarified. "Right now we have no sign ordinance essentially." On the one hand they don't want all the clutter, on the other hand they want people to be able to express themselves.

Councilor Nash noted they had a draft for two signs at one point. Attorney Seewald said he believed so.

When it came to campaigns, if campaign managers saw signs on city property, they would go and remove them, Councilor LaBarge volunteered. She asked if that is still the same?

Attorney Seewald said yes, they have the right to control signs on public property because it's the city's property. A lot of people don't realize that tree belts are public property so they get removed from tree belts as well.

Member Napolitano noted that they briefly discussed conceptually that they wouldn't pass along just fully-formed ordinances. He recommends this be included in the report since it is something that has to be done. He agreed it should be put in the basket of things to be handed off to the city council as recommendations.

Member Paik wondered if they should keep a running list. Mrs. Krutzler offered to set up a list of "Items to Be Included in the Report" so things don't fall through the cracks.

Member Paik asked if they should consider it reviewed by him. Attorney Seewald said the problem is that he doesn't have anything specific to review.

Member Napolitano moved that this suggestion of reviewing a sign ordinance based on the Supreme Court decision be included in recommendations to City Council. Councilor Nash seconded. The motion passed unanimously 5:0 by roll call vote.

6. COMMERCIAL BUFFER ZONE PROPOSAL

Discussion with Councilor Alex Jarrett. Since Councilor Jarrett was unable to be present, members decided to table this item to the next meeting.

7. PROPOSAL FOR EXPANDED MAP CHANGE NOTIFICATION UNDER 350-3.5

This is a proposal he and the council president are both working on, Councilor Nash said. It has come out of a number of zoning map changes they have worked on as councilors over the last few years. Whenever there's a map change, the current practice is that properties directly affected by the change are notified, but immediate abutters are not notified and residents living within the structures are not notified. Furthermore, people who reside or rent in the abutting zone are not notified either. In council, they have heard a lot from

abutters over the years, most recently back in the spring when they did some rezoning on Conz Street. Some abutters are always showing up saying they didn't know about this and can't believe nobody notified them. In fairness, he thinks that's a reasonable complaint. What they are allowing with a map change is for a neighbor to do different things and he thinks it's important for the person on the other side of the fence to know what that is and to be invited into that discussion. With the encouragement to take a more inclusive approach, he thinks it's time to consider abutters so they can also weigh in.

He knows this gets very complicated for the planning department but he still thinks it's time for them to have this discussion and try to be more inclusive. They all know that people who own property tend to be people who are less marginalized and people residing in buildings tend to be more marginalized. It is a way to achieve their goal and overall invite more people to the table.

During discussions around the map change on Conz Street, there were a number of residents who got word and were at that meeting. There were abutters who were against the map change and it was the residents who lived a block away who were in favor of the change and said, 'Oh, we think that is great.'

It had to do with the WWII club at the time. They really supported all of the activities going on there that weren't allowed under the current zoning. They were very supportive of the change.

He is well aware of the ask that this involves. Once they get into renters, there is an exponential increase in the number of mailings the planning department needs to do. For example, everybody in Salvo House would have needed to get some kind of postcard. The only thing he was able to do at the time was get into the building and put a notice on the bulletin board because he as a councilor doesn't have a way to mail to everybody.

His thought is he'd like to see them refer this to the Planning Board and work with the planning department on coming up with some recommendations around this. It's complicated, he acknowledged.

Members asked questions and offered comments. Councilor LaBarge expressed her understanding that, under state law, it is the building owner's responsibility to notify tenants of a proposed sale.

However, Attorney Seewald said she is confusing several different things. The sale of a business requires no notice to anybody; it's private commerce. The reason the sale of the WWII club was at issue is that the sale was contingent on a zoning change so the buyer could do what he wanted to do. Any time a map change takes place, city bylaws require affected property owners to get notice.

Councilor Nash has pointed out a very simple example. But hypothetically, if they were to decide to merge Urban Residential A, B and C zones into a single zone, everyone in A, B and C zones would need to get noticed and everyone abutting those properties, everyone abutting the abutters within 300 feet and every resident of all of those properties would need to get noticed – potentially thousands of notices. The city has eliminated zones in the past and those are map changes. "We have to be very careful," he cautioned. "It's very simple when you're changing three properties..." There's probably 20 people who need to be notified. When you are merging or eliminating a zoning district, "You're talking about many, many thousands of people needing to get noticed."

The other thing he would point out is that, unlike ownership, city officials have no way of knowing who's living in all of these buildings. They do have the street list, but that's a snap shot in time. Not only is not

everyone on that list but he would hypothesize that many of the people who don't end up on the city list are the underserved and marginalized.

This is something they really need to balance. State law does not require notice to owners, to abutters and to abutters of abutters. Publication notice is all that's needed. Northampton has expanded that to owners. He understands the desire, but the potential burden is huge.

When she and her husband applied to have a building lot, their attorneys did the notifications, Councilor LaBarge related. However, she said she has to agree with Attorney Seewald. "You're looking at a tremendous amount of people here and how would you find those records?"

The only way to do it is to go to rental registration, which Amherst has done, Attorney Seewald volunteered. He was practicing in Amherst at the time, so he lived through it and it was an enormous undertaking. He questioned whether residents who didn't get notice would have the right to appeal. Would tenants have the right to appeal if they didn't get notice? He asked rhetorically.

Councilor Nash asked what they would be risking by not notifying someone if this were codified in ordinance.

The zoning being undone and redone, Attorney Seewald responded. They would be raising a tenant to the status of someone who is entitled to due process. At the state level no one is entitled to due process. You can't provide the right to due process, then not provide the process and say, 'oh well.' "You're creating rights."

Councilor Nash asked whether an executive order to much the same effect would carry the same weight as an ordinance.

No, Attorney Seewald said. Right now, the planning department requires little orange signs to be put out by the applicant. He thinks they're finding that those are most likely to inform people. Newspaper publication is a relic; it should be in the dust bin of history because no one is reading the legal notices except for him.

At the same time, having to put orange signs on every property that's going to be rezoned can be a huge responsibility.

To counter that, in his view it's the map changes that are the most important, Councilor Nash persisted. The city does a good job of notifying people around special permits and site plan approval. But the zoning is already cooked at that point. A map change is where there is opportunity for changing the regulations; that's the meeting everybody needs to be at.

He has sat through too many Planning Board meetings where too many constituents have said why didn't I know this was going to happen before this meeting? It's a done deal. "Map change is the big opportunity to really talk about what the change is going to look like."

He would like to refer this to the Planning Board, he reiterated.

Councilor Nash moved to refer this to the Planning Board to get further input. Councilor LaBarge seconded.

Attorney Seewald asked if they might rather send it to the Planning Board and request their review and comment since he isn't sure the committee has the authority to refer matters.

Member Napolitano asked if they have demographic information on the distinction between homeowners and renters such as racial demographics. Given their focus on disproportionately affected communities, it would be helpful to know who exactly is being impacted.

Attorney Seewald said planning might have some of those statistics.

In a back and forth with Wayne, he referred to all sorts of data the planning department has, Councilor Nash volunteered. He has reasonably accurate information about 85% of residents but a number of people are flying under the radar. Part of it has to do with renting and part with they don't want to be on the radar.

Councilor Nash agreed there are risks but noted they are already taking risks letting property owners know.

The motion passed unanimously 5:0 by roll call vote.

8. ITEMS PENDING

False Alarms and Related ordinances

Councilor Thorpe said he put this on the agenda to see who they might want to have come in to talk about it. He suggested the fire department. Councilor LaBarge said she thought that was a great idea.

Mrs. Krutzler clarified that intrusion alarms are responded to by the police department. Member Paik reminded her that at the November 2nd meeting she said she would also like to discuss the ordinance related to fire alarm activations. She referred to §116-12, which reads as follows: "After the Fire Services have recorded three separate false alarms within any twelve-month period from an alarm system, the Fire Chief shall notify the alarm user by certified mail of such fact and require said user to submit within 15 days after receipt of such notice certification indicating that the problem has been identified and corrected. In the event that the Fire Chief records four or more false alarms in any twelve-month period related to fire alarm system failure. The Fire Chief may order the replacement of the system or component, as necessary to prevent the occurrence of false alarms."

Members agreed to invite the fire chief to a future meeting.

Councilor Jarrett will be here next time, Member Paik reminded.

9. ADJOURN

Councilor Nash moved to adjourn. Councilor LaBarge seconded. The motion passed unanimously 5:0. The meeting was adjourned at 6:27 p.m.